

Hon. Thomas S. Zilly

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON AT SEATTLE

ESTHER HOFFMAN; et al.,

Plaintiffs,

vs.

TRANSWORLD  
SYSTEMS INCORPORATED; et al.,

Defendants.

No. 2:18 cv 1132-TSZ

JOINT STATUS REPORT AND  
DISCOVERY PLAN

Pursuant to LCR 16(a) and the Court's Order Extending Initial Discovery Dates, (Dkt 121 at 6), Plaintiffs and Defendants, though counsel (collectively the "Parties"), submit the following Joint Status Report and Discovery Plan.

**1. A statement of the nature and complexity of the case.**

Plaintiffs have alleged, *inter alia*, that the National Collegiate Student Loan Trusts (collectively, "the NCSLTs") that claim to be the owners of the Plaintiffs' and Class members' student loan obligations and that claim the right to be paid on the obligations do not have proof that they own the loans; that Transworld Systems Incorporated ("TSI"), Patenaude & Felix, APC and Matthew Cheung (collectively "Patenaude") presented false affidavits and declarations to courts in order to obtain default judgments and summary judgments against the Plaintiffs and Class members; that the NCSLTs, TSI, and Patenaude knew that the affidavits

JOINT STATUS REPORT AND DISCOVERY PLAN - 1  
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1 and declarations they submitted to the Court were false when they were submitted; that the  
2 student loan collection tactics of TSI, and Patenaude knowingly contemplate that evidence  
3 submitted in support of the collection efforts was and is false; and that the Defendants filed  
4 lawsuits against the Plaintiffs and the Class, without the intent or ability to pursue the lawsuits  
5 if they were contested.

6 Defendants deny Plaintiffs' claims and state that (1) the Defendant Trusts own all of the  
7 loans at issue in this case; (2) the lawsuits the Defendant Trusts brought subsequent to  
8 Plaintiffs' defaults on those loans were brought in good faith and in compliance with all  
9 applicable laws and court rules and procedures; and (3) the declarations filed by Patenaude  
10 were filed on behalf of its client in good faith.

11 The Parties do not believe that this case presents complex factual or legal issues.  
12 However, if a class were to be certified, it would add a level of complexity to the litigation and  
13 administration of this case.

14 **2. A proposed deadline for the joining of additional parties.**

15 The Parties believe that the deadline for joining additional parties should be closed.

16 **3. Whether the parties consent to assignment of this case to a full time United**  
17 **States Magistrate Judge, pursuant to 28 U.S.C. §636(c) and Local Rule**  
18 **MJR 13 to conduct all proceedings.**

19 No.

20 **4. A discovery plan that states, by corresponding paragraph letters, the**  
21 **parties' views and proposals on all items in Fed. R. Civ. P. 26(f)(3), which**  
22 **includes the following topics:**

23 **a. Initial disclosures.**

24 The Parties exchanged Rule 26(a) Initial Disclosures on or before March 30, 2021, as  
25 required by the Court's Order on initial discovery. (Dkt 121).

1                   **b. Subjects, timing, and potential phasing of discovery.**

2           The Parties agree that discovery should be conducted within the parameters provided by  
3 the Federal Rules of Civil Procedure. *See also* Section 5(e) below, entitled: “Anticipated  
4 discovery sought.”

5                   **c. Electronically stored information.**

6           Without waiving objections as to any particular document or categories of documents,  
7 the Parties agree that, in the initial round of document production, documents may be produced  
8 in searchable bates-numbered PDF, TIFF, or JPEG format. After initial production, Plaintiff  
9 may seek some documents in native format with metadata. Defendants will need to see  
10 Plaintiff’s subsequent requests to determine the appropriate response, but reserve all objections.

11           The Parties have agreed upon various issues relating to the production of ESI, which are  
12 set forth at Section 4(j), *infra*.

13           The Parties agree that, if there is a dispute, or if the need to produce other categories of  
14 documents arises, they will work cooperatively to minimize the time and expense related to  
15 production of e-discovery. If the Parties are still unable to agree after good-faith efforts to  
16 resolve discovery disputes, they may resort to seeking resolution from the Court.

17                   **d. Privilege issues.**

18           The Parties agree that privilege logs will be produced with each party’s discovery  
19 responses, either at the time of production or within a reasonable time after completing rolling  
20 productions. The Parties anticipate working in good faith on a stipulated protective order based  
21 on a modified version of the Court’s model protective order and expect it to be filed within a  
22 reasonable time. Such stipulated order may also provide agreements regarding privilege,  
23 including a procedure to “clawback” documents and the assertion of privilege claims after  
24 production pursuant to Federal Rule of Evidence 502.

1 Defendants believe that there are attorney-client privileged communications between  
2 the law firm of Patenaude and Felix, APC, its client, the Trusts, and the Trusts' Subservicer,  
3 TSI. There may also be other privileged communications between Defendants and third parties,  
4 including regulators, and between and among the various Defendants. Plaintiffs may dispute  
5 what matters, documents, and communications are privileged.

6 The Parties will work in good faith to narrow any disputes regarding privilege. If the  
7 Parties are still unable to agree after good-faith efforts to resolve discovery disputes, they may  
8 resort to seeking assistance from the Court.

9 The Parties may also intend to enter into a modified version of the Court's stipulated  
10 protective order, to address confidentiality issues that may arise.

11 **e. Proposed limitations on discovery.**

12 All discovery should be limited as provided for in the Federal Rules of Civil Procedure  
13 and Local Rules. It is Defendants' position that class discovery should not be permitted until  
14 after class certification, if that occurs, other than discovery targeted to determine whether class  
15 treatment is appropriate. The Plaintiffs do not agree, due to the overlap between merits and  
16 class certification discovery, in particular on the public interest requirement for a Washington  
17 Consumer Protection Action claim, and whether injunctive relief is an appropriate remedy for  
18 Plaintiffs' claims. Otherwise, the Parties do not currently seek additional limitations on  
19 discovery, but may seek limitations should the need arise.

20 **f. The need for any discovery related orders.**

21 The Parties intend to submit a modified stipulated protective order as to production of  
22 confidential documents. Additional orders may be necessary based on the scope of discovery  
23 served and discussions of the Parties as to such discovery. The Parties will attempt to amicably  
24

1 resolve differences whenever possible. If a genuine dispute arises, and the parties are unable to  
2 resolve it, the Court may be requested to resolve such disputes.

3  
4 **5. The parties' views, proposals, and agreements, by corresponding paragraph**  
5 **letters, on all items set forth in Local Civil Rule 26(f)(1), which includes the**  
6 **following topics:**

7 **a. Prompt case resolution.**

8 Parties intend to file dispositive motions at an appropriate stage on all or part of the  
9 claims, allegations, and/or affirmative defenses in an effort to shorten or simplify the case. The  
10 parties currently have no additional, specific suggestions for shortening or simplifying the case.

11 **b. Alternative dispute resolution.**

12 If the matter is not dismissed on dispositive motions, the parties prefer mediation at the  
13 close of discovery (or earlier if the parties agree), pursuant to LCR 39.1.

14 **c. Related cases.**

15 None.

16 **d. Discovery management.**

17 Discovery should be managed as provided for in the Federal Rules of Civil Procedure  
18 and Local Rules. The Parties do not currently seek additional management on discovery issues.

19 **e. Anticipated discovery sought.**

20 The parties anticipate discovery depositions of the parties and discovery pursuant to  
21 Civil Rule 33, 34 and 36. There also may be a need for some discovery from non-parties. This  
22 is a statement of the parties' present intentions but does not represent an agreement as to any  
23 particular areas of inquiry.

24 Plaintiffs currently intend to conduct discovery on at least the following topics:  
25

1           1.     The methods employed by the Defendants to attempt to collect on alleged  
2 student loan obligations, and their policies and procedures for attempting to collect, and  
3 collecting, on such debt.

4           2.     The number of persons from whom Defendants attempted to collect on alleged  
5 student loan obligations, and the number of those from whom the Defendants collected.

6           3.     How much money was collected by the Defendants from the Plaintiffs and  
7 Class members on alleged student loan obligations.

8           4.     The documentation held by the Defendants that evidences the NCSLTs'  
9 ownership of the Plaintiffs' and Class members' student loan obligations.

10          5.     The information known by the Defendants regarding the transfer of  
11 documentation relating to loans allegedly owned by the NCSLTs.

12          6.     Communications between the Defendants regarding the location of records  
13 relating to the ownership of the student loans that the Defendant NCSLTs allege they own.

14          7.     All matters relating to the Defendants' dealings with the Consumer Financial  
15 Protection Bureau, other government entities, and other regulators.

16          8.     Documents and testimonial evidence related to the Defendants, defenses,  
17 affirmative defenses, and the claims of Plaintiffs and Class members.

18                 Defendants currently intend to conduct discovery on at least the following topics:

19           1.     Records and testimonial evidence related to Plaintiff's' incurring the underlying  
20 student loan debts.

21           2.     Records and testimonial evidence relating to the transfer of the student loan  
22 debts to the Trusts.

23           3.     Discovery to obtain documents related to Plaintiffs' financial status and  
24 financial ability to repay debts, including bank statements and credit card records.

- 1           4.     Discovery related to the underlying litigation.
- 2           5.     Discovery regarding Plaintiffs' prior lawsuits, if any.
- 3           6.     Discovery related to Plaintiffs' receipt of any communications from Defendants
- 4 and actions taken by Plaintiff upon receipt.
- 5           7.     Discovery related to each of Plaintiffs' written and/or oral communications with
- 6 Defendants.
- 7           8.     Discovery regarding Plaintiffs' claimed damages, if any.
- 8           9.     Discovery related to Plaintiffs' claims and Defendant's defenses.
- 9           10.    Discovery related to Plaintiffs' assertion that one or more putative classes or
- 10 sub-classes may be properly certified in this action pursuant to Federal Rule of Civil Procedure
- 11 23(b)(2) and/or (b)(3), which Defendants dispute.

12           **f.     Phasing motions.**

13           The Parties do not believe that phasing motions is desirable.

14           **g.     Preservation of discoverable information.**

15           The parties do not foresee issues with the preservation of or production of electronically

16 stored information, subject to any applicable objection or privilege.

17           **h.     Privilege issues.**

18           *See* Section 4(d).

19           **i.     Model Protocol for Discovery of ESI.**

20           The parties do not adopt the Model Protocol for Discovery of ESI because they believe

21 it is unduly complicated for application to this particular case.

22           **j.     Alternatives to Model Protocol.**

23           Without waiving objections regarding challenges to production of specific documents,

24 or categories of documents, the Parties agree that documents other than emails and email

25

1 attachments will generally be produced in PDF format If a specific email is produced in PDF  
2 format, and a party believes it needs the .pst file, it may request such. If the need to produce  
3 other categories of documents arises, the parties agree to work cooperatively to minimize the  
4 time and expense related to production of e-discovery. The parties further acknowledge their  
5 duties relative to inadvertent production of privilege documents, under FRCP 26(b)(5)(B) and  
6 Rule 502 of the Federal Rules of Evidence.

7 **k. Deadline for Filing Motion for Class Certification.**

8 The filing deadline for Plaintiffs' motion for class certification should be 180 days from  
9 the date of the Court's Scheduling Order.

10 **6. The date by which discovery can be completed.**

11 The parties contemplate that the case schedule, including the discovery deadline, may  
12 need to be amended if one or more classes are certified.

13 If one or more classes are **not** certified, the parties propose 120 days before trial as a  
14 deadline for completion of all discovery.

15 Defendants will seek an extension of discovery should one or more classes be certified.

16 If one or more classes are certified, the parties will meet and confer again to discuss  
17 how the case schedule should be modified to take into account Plaintiffs' need for class  
18 discovery, and how long Defendants may need to respond to Plaintiffs' class discovery  
19 requests.

20 **7. Whether the case should be bifurcated by trying the liability issues before**  
21 **the damages issues, or bifurcated in any other way.**

22 No.



1           **8.     Whether the pretrial statements and pretrial order called for by Local Civil**  
2           **Rules 16(e), (h), (i), and (k), and 16.1 should be dispensed with in whole or**  
3           **in part for the sake of economy.**

4           The parties agree that they will comply with, and not dispense with, pretrial statements  
5           and the pretrial order.

6           **9.     Whether the parties intend to utilize the Individualized Trial Program set**  
7           **forth in Local Civil Rule 39.2 or any ADR options set forth in Local Civil**  
8           **Rule 39.1.**

9           The Parties do not intend to use the Individualized Trial Program set forth in Local  
10          Civil Rule 39.2. If the matter is not dismissed on dispositive motions, and ADR becomes  
11          necessary, the parties believe that mediation at the close of discovery before an independent  
12          mediator mutually agreed to by the Parties will be the most acceptable options set forth in  
13          Local Civil Rule 39.1.

14          **10.    Any other suggestions for shortening or simplifying the case.**

15          Parties intend to file dispositive motions on all or part of the claims, allegations, and/or  
16          affirmative defenses at the appropriate times in an effort to shorten or simplify the case. The  
17          parties currently have no additional, specific suggestions for shortening or simplifying the case.

18          **11.    The date the case will be ready for trial. The Court expects that most civil**  
19          **cases will be ready for trial within a year after filing the Joint Status Report**  
20          **and Discovery Plan.**

21          The Parties believe that this case will be ready for trial by 18 months if this case  
22          remains as the individual claims of the named Plaintiffs. Defendants will seek an extension of  
23          the trial date should a class be certified.

24          **12.    Whether the trial will be jury or non-jury.**

25          Plaintiff has demanded a jury.

**13.    The number of trial days required.**

            It is Plaintiffs' position that this case can be tried in six court days as an individual case,  
            and that it can be tried in 10-14 court days if a class is certified.

1 It is Defendants' position that this case can be tried in 10-14 days as an individual case,  
2 and that the scope of class certification, if any, would dictate how long the trial would last.

3 **14. The names, addresses, and telephone numbers of all trial counsel.**

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**15. The dates on which the trial counsel may have complications to be considered in setting a trial date.**

Plaintiffs have conflicts for trial on the following dates:

3/01/22-4/15/22, 10/24/22-11/11/22

Defendants have conflicts for trial on the following dates:

09/12/22 – 09/30/22

**16. Whether all defendant(s) have been served.**

Yes.

**17. Whether any party wishes a scheduling conference before the Court enters a scheduling order in the case.**

No.

**18. List the date(s) that each and every nongovernmental corporate party filed its disclosure statement pursuant to Fed. R. Civ. P. 7.1 and Local Rule 7.1.**

08/07/18 Transworld Systems Inc., (Dkt 5).

08/07/18 Patenaude and Felix, APC (Dkt 6).

04/12/21 NCSLTs (Dkt.144).

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1 JOINTLY SUBMITTED AND DATED this 13th day of April, 2021.

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